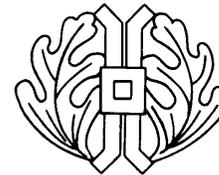


PREVENTIVE LAW SERIES  
**UNIFORMED SERVICES FORMER  
SPOUSE PROTECTION ACT –  
Retirement Pay Issues**



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**What role does the Uniformed Services Former Spouse Protection Act (USFSPA) play in a servicemembers retired pay?**

USFSPA allows **states, not** the federal government, to treat disposable military retired pay as community property and to divide it between the spouses.

USFSPA allows spouses or former spouses to receive military retired pay that would otherwise have been terminated due to a member's or former member's misconduct involving abuse of a spouse or dependent child.

USFSPA allows for direct payment of current child support/alimony from the member's military retired pay.

USFSPA allows for former spouses to be designated as beneficiaries of a Survivor Benefit Plan.

**Basics of Military Retired Pay**

Active duty servicemembers become entitled to a pension after 20 years of active service. Retirement pay, however, does not begin until after the servicemember is discharged from active duty. The amount of retired pay per month is based on the term of service and the member's basic pay at the time of retirement.

**Divisibility of Military Retired Pay As Community/Separate Property**

Almost all states have ruled that military retired pay is divisible for property settlement purposes. Arkansas, Indiana, North Carolina, and Mississippi require that the pension be vested before it can be divided as marital property. An unvested pension is treated as separate property and thus not divisible. A vested pension, on the other hand, constitutes marital property.

If a court intends to divide disposable military retired pay because it is marital community property, then the court must acquire jurisdiction over the servicemember either through;

- (1) the servicemember's domicile in the territorial jurisdiction of the court, or
- (2) the servicemember's residence within the state other than because of military assignment in the territorial jurisdiction of the court, or
- (3) the servicemember's consent to jurisdiction

In California, the court uses the following formula to divide disposable retired pay as community property:

$$\frac{1}{2} \times \frac{\text{Length of marriage overlapping military service}}{\text{Total Length of Military Service}} \times 100\% = \text{Spouse's \%}$$

In California, Disability Pay is not included as disposable retired pay and is not divisible as community property. Thus, any disability pay that a retired military member receives as part of his/her retirement cannot be divided as marital community property according to USFSPA.

### **Direct Payment of Disposable Retired Pay to Spouse**

In order to get a direct payment of retired pay as property to the spouse, the spouse must have been married to the servicemember for at least ten years and for those ten years, the servicemember was in the service. Further, the court order must provide for payment from military retired pay, and the amount must be a specific dollar figure or specific percentage of disposable retired pay. The order must also show that the court has jurisdiction over the servicemember in accordance with USFSPA provisions.

### **USFSPA and Dependent Abuse**

A spouse and former spouse have a right to retired pay lost as a result of a member's misconduct involving dependent abuse. Thus when a retirement-eligible servicemember receives a punitive discharge by court-martial for dependent-abuse offense(s) and his/her eligibility to retired pay is terminated as a result of that misconduct, a spouse or former spouse may still be able to receive payments from retired pay that the member would have been entitled to "but for" the misconduct. **Only** victim-spouses who were married to the military member for at least ten years while the member was performing military service creditable for retirement will be eligible for payment of a portion of retired pay. This is the "10/10 spouse" criteria that is required for direct payments of portion of retired pay. If the victim-spouse is not a 10/10 spouse, he/she is ineligible to receive direct payment.

### **Military Retired Pay and Child Support or Spousal Support**

USFSPA permits direct payment of current child support or spousal support by a court order from a servicemember's retired pay. The jurisdictional requirements that apply for dividing military retired pay as community property do NOT apply to the direct payment of child support or spousal support. USFSPA cannot be used to enforce arrearages (past amounts) of child and spousal support – only support that is currently due or will be due in the future.

### **Survivors' Benefit Plan (SBP)**

A former spouse can be designated an SBP Beneficiary. The court can order a retiring servicemember to designate the former spouse as an SBP beneficiary – the election does not have to be voluntary. The election is not automatic. It must be triggered by a request from the former spouse and the request must be sent to the appropriate military finance center not later than one year after the date of the court order. Once a timely request is made, the military finance center will flag the servicemember's records. Upon the member's retirement, the former spouse will be designated as an SBP beneficiary.

### **Legal Assistance Appointments:**

For an appointment to see a legal assistance attorney, please contact the Legal Assistance Office, located in Building 610, Naval Air Station North Island, by telephone at (619) 545-6278.

### **Resources:**

10 U.S.C. Sections 1072, 1076, 1086, 1408, 1447, 1448, 1450, 1451  
32 Code of Federal Regulations Part 63  
[www.dfas.mil](http://www.dfas.mil)